

March 31, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**RECOMMENDATION TO PROVIDE LEGAL REPRESENTATION FOR
A DEPUTY DISTRICT ATTORNEY IN THE DISTRICT ATTORNEY'S OFFICE
FOR AN ADMINISTRATIVE PROCEEDING BROUGHT BY THE STATE BAR
(ALL DISTRICTS) (3-VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the administrative proceeding is brought on account of an act or omission in the scope of the deputy district attorney's employment as an employee of the District Attorney's Office.
2. Find that the defense of the deputy district attorney would be in the best interests of the County.
3. Find that the deputy district attorney acted, or failed to act, in good faith, without actual malice, and in the apparent interests of the County.
4. Direct County Counsel to secure legal representation, at the County's expense, for one deputy district attorney in the District Attorney's Office.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS:

I seek your Board's approval of my recommendation to provide legal representation for a deputy district attorney who has been requested to respond to a State Bar inquiry regarding possible violations of Business and Professions Code section 6068(d) and California Rules of Professional Conduct 5-200(A) and (B) and 5-200. This inquiry arises from the jury trial of defendants Peter Sakarias and Tauno Waidla, Superior Court Case No. A711340, who were convicted of capital murder with special circumstances and sentenced to death. The California Supreme Court has now reversed the penalty as to defendant Sakarias.

The deputy district attorney received a letter from the State Bar regarding comments made by the Supreme Court in its reversal of the penalty for defendant Sakarias. In 1990, the deputy district attorney tried defendant Waidla for capital murder. The jury found the defendant guilty of first degree murder, found special circumstances true and recommended a sentence of death. In 1991, the deputy district attorney tried co-defendant Sakarias for the same murder. The jury found the defendant guilty of first degree murder, found special circumstances true and recommended a sentence of death. In 2000, the California Supreme Court affirmed the convictions and sentences of both defendants on automatic appeal. In March 2005, the Supreme Court, on a petition for writ of habeas corpus, affirmed the conviction and sentence for defendant Waidla, and affirmed the conviction but reversed the penalty of death for defendant Sakarias.

I have reviewed the facts and circumstances surrounding this case. The deputy district attorney has worked for the District Attorney's Office since August 1986. At the time of the jury trial, the deputy district attorney was employed by the District Attorney's Office and was acting within the course and scope of his employment. My review reveals no indication that the deputy district attorney acted with malice. Rather, it appears that the deputy district attorney acted in apparent good faith and in the apparent interests of the People of the State of California and the County of Los Angeles. Further, I believe that defense of this deputy district attorney would be in the best interests of the County.

FISCAL IMPACT/FINANCING

The costs for providing legal representation should not exceed \$25,000. Funds will be allocated from the District Attorney's existing operating budget. If the costs increase, they will continue to be allocated from the District Attorney's operation budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Government Code Section 995.6 provides that the County is not required to provide for the defense of an administrative proceeding brought against a County employee, but the County may provide for such defense if:

- (a) The administrative proceeding is brought on account of an act or omission in the scope of his employment as an employee of the public entity; and
- (b) The public entity determines that such defense would be in the best interests of the public entity and that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the public entity.

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CONTRACTING PROCESS:

Contracting process requirements are not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

None.

CONCLUSION:

I recommend that your Board find that the deputy district attorney acted in apparent good faith, without actual malice, and in the apparent interests of the County and that his representation before the State Bar is in the best interests of the County. I further recommend that your Board direct County Counsel to secure legal representation for the deputy district attorney at the County's expense.

Respectfully submitted,

STEVE COOLEY
District Attorney

sjm

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors